J.B. JEYARETNAM

v.

LEE KUAN YEW

COURT OF APPEAL, SINGAPORE
YONG PUNG HOW CJ
LP THEAN J
CHAN SEK KEONG J
[CIVIL APPEAL NO. 65 OF 1990]
26 APRIL 1991

CIVIL PROCEDURE: *Application for disqualification of trial Judge - Apparent bias - Rejected - Appeal - Petition of appeal - Notice of Appeal not directed at decision of Judge not to disqualify himself - Rules of the Supreme Court 1970 [Sing], O. 57 r. 4(1)(b).*

On 2 July 1990, when the trial of the action commenced before the High Court, the appellant, J made an application to the trial Judge to disqualify himself on the ground of apparent bias. The Judge rejected the application and proceeded with the trial. On 3 August 1990, the Judge delivered a judgment in favour of the respondent L.

On 15 August 1990, J filed a notice of appeal against the Judge's decision of 3 August 1990. On 4 December 1990, J filed his petition of appeal. L thereafter filed a notice of motion to strike out para. 4(1) of the petition of the appeal, on the ground that no Notice of Appeal against the Judge's refusal to accede to the application had been filed and served as required citing O. 57 r. 4(1) of the Rules of the Supreme Court 1970 (RSC). L contended that the refusal by the Judge of the application to disqualify himself fell within the terms of para. (b) as it was distinct and separate from the case, and notice of appeal not having been lodged in time, there was no appeal at all and so that paragraph ought to be struck out. J contended that the application to the Judge to disqualify himself was not an application within the meaning of r. 4(1)(b) of O. 57 of RSC that it was part of his judgement on 3 August 1990.

Held:

[1] It was not necessary to determine whether the application by the appellant to disqualify the Judge was an application in terms of r. 4(1)(b). The L's notice of motion sought to strike out para. 4(1) of the petition of appeal on the basis that it was an appeal against the Judge's decision not to disqualify himself from hearing the case. However, this notice of motion failed on a plain reading of the notice of appeal and the petition of appeal. The notice of appeal was expressly directed at the decision of the Judge given on 3 August 1990 and not his decision not to disqualify himself on 2 July 1990. There was nothing in the said notice which referred to an appeal against the refusal of his application.

[2] The allegation of apparent bias on the part of the Judge was simply one of the grounds on which the appellant sought to reverse or set aside the judgment of the Court. The success or failure of J's argument was a matter to be determined at the hearing of the appeal.

[Respondent's notice of motion dismissed.]

Cases referred to:

Aviagents v. Balstravest Investments Ltd. [1966] 1 WLR 150 ***(cit)***
Burgess v. Stafford Hotel Ltd. [1990] 1 WLR 1215 ***(cit)***
Jones v. Andrew [1888] 58 LT 601 ***(cons)***
Laird v. Briggs [1881] 16 Ch D 663 ***(cit)***

Ooi Phee Cheng v. Kok Yoon San [1951] 1 MLJ 135 ***(dist)***
Re Roberts [1890] WN 23 ***(cons)***
Trail v. Jackson [1876] 4 Ch D 7 ***(cons)***

Legislation referred to:
Rules of the Supreme Court 1970 [Sing], O. 57 r. 4(1)

For the appellant - Rajan Nair
For the respondent/applicant - Tan Kok Quan

JUDGMENT

Chan Sek Keong J:

This was an application by the respondent to strike out para. 4(1) of the Petition of Appeal. After hearing the arguments of Counsel for the respondent and for the appellant, we dismissed the motion with costs. We now give our reasons.

At the commencement of the trial of the action before the High Court on 2 July 1990, Counsel for the defendant, the appellant in this appeal, made an application to the Judge trying to disqualify himself on the ground of apparent bias. The Judge rejected the application and proceeded with the trial which concluded on 6 July 1990. On 3 August 1990, the Judge delivered a written judgment in favour of the plaintiff.

On 15 August 1990, the appellant filed a Notice of Appeal in these terms:

> Take notice that (the appellant) being dissatisfied with decision of (the Judge) given at Singapore on (3 August 1990) appeals to the Court of Appeal against the whole of the said decision.

On 4 December 1990, he filed his petition of Appeal, the relevant paragraphs of which are as follows:

> 3. By judgment dated (3 August 1990) the learned Judge gave judgment for the respondent and ordered the appellant to pay damages of $260,000 with interest thereon from (1 September 1988) and also ordered the appellant to pay the costs of the action.
>
> 4. Your petitioner is dissatisfied with the said judgment on the grounds following:
>
> (1) The learned trial Judge ought to have acceded to the submission made on behalf of the appellant that he should disqualify himself from hearing the action on the ground of apparent bias.
>
> (2) The learned trial Judge erred in law and in fact in holding ....
>
> (5) Your petitioner prays that such judgment may be reversed or set aside or that such judgment may be made or given as to this Honourable Court may seem just in all the circumstances.

The respondent filed a notice of motion to strike out para. 4(1) of the Petition Appeal on the ground that no Notice of Appeal against the Judge's refusal to accede to the application had been filed and served as required by O. 57 r. 4(1) of the Rules of the Supreme Court 1970. Although there was no express provision in the Rules of the Supreme Court which enabled this Court to hear an application of this nature, Counsel for the respondent referred us to a number of decisions of the English Court of Appeal which decided that it had the power to do so by virtue of its inherent jurisdiction over its own proceedings. Two of the decisions were *Aviagents v. Balstravest Investments Ltd.* [1966] 1 WLR 150 and *Burgess v. Stafford Hotel Ltd.* [1990] 1 WLR 1215. Counsel for the appellant conceded that this Court had jurisdiction.

Rule 4(1) provides as follows:

> Subject to the provisions of this rule, every notice of appeal must be filed and served under r. 3(6) within one month:
>
> (a) in the case of an appeal from an order in Chambers, from the date when such order was pronounced or when the appellant first had notice thereof;
>
> (b) in the case of an appeal against the refusal of an application, from the date of such refusal;
>
> (c) in all other cases, from the date on which the judgment or order appealed against was pronounced.

Counsel for the respondent contended that the refusal by the Judge of the application to disqualify himself fell within the terms of para. (b) as it was distinct and separate from the case, and notice of appeal not having been lodged in time, there was no appeal at all and so that paragraph ought to be struck out. Counsel relied on the following authorities: *Jones v. Andrew* [1888] 58 LT 601, *Re Roberts* [1890] WN 23 and *Trail v. Jackson* [1876] 4 CH D 7, all of which were decided under the corresponding English rule.

Jones v. Andrew concerned an interlocutory application. J, the principal who was suing A, his agent, for an account, had obtained an order for an affidavit of documents by A. A then obtained leave to seal up portions of the documents which were irrelevant. J applied for an order to unseal all the documents or such portions as the Court should direct. The application was heard in Court and the Judge directed certain items to be unsealed and refused the rest of the application. J appealed and A took objection that the appeal against one part of the application (that is, for unsealing **all** the documents) was outside the period allowed for the notice of appeal to be filed. The Court of Appeal held that the matters decided were not clearly severable. Cotton LJ in his judgment (at p. 603) said:

> But in this case we cannot decide what was separate or severable before we have heard the appeal, and, as the respondents had notice within the proper time after the order was made that there would be an appeal when the order was drawn up, I think we ought, if the objection would otherwise prevail, to give leave to serve the notice of appeal after the time. I am of opinion that the principle does not apply. I think it must be confined to cases where the application is clearly severable without entering into the question of appeal.

In *Trail v. Jackson*, the application was for judgment. The applicant took out a summons in the Chambers of the Vice-Chancellor to prove in the estate of a testator for arrears of rent and also for $260 for dilapidations to 3 houses at the expiration of the lease. On 2 June 1976, the Vice-Chancellor allowed the application for rent and $61 for dilapidations in respect of one house but made no order on $199 in respect of the other 3 houses. The order was drawn up on 2 August 1976. Notice of appeal was given on 9 August 1976 that the order might be "discharged, varied or set aside". The Court of Appeal held that the applicant was out of time as "The claims were separate applications although joined in one summons, and some of them were granted and some refused." (per James LJ at p. 9).

Re Roberts concerned the taxation of several bills of costs rendered by a solicitor for work done in connection with two mortgages. the taxing master disallowed certain items, and Roberts, the solicitor, applied to the Judge to review 4 items disallowed. The Judge, on 5 August 1989, allowed one part of the first objection and disallowed the rest of it, and referred it back to the taxing master to state his answers to objections 2, 3 and 4. On 13 January 1990, Roberts gave notice of appeal against the order of 5 August 1989 and served it within 21 days from the date on which the said order had been passed and entered. The Court of Appeal, following *Trail v. Jackson*, held that the appeal was out of time as the refusal was in respect of a distinct objection.

Counsel for the appellant contended that the application to the Judge to disqualify himself was not an application within the meaning of r. 4(1)(b) and that it was part of his judgment pronounced on 3 August 1990. He referred to the decision in *Laird v. Briggs* [1881] 16 CH D 663 where the Court of Appeal held that a refusal to allow an application to amend the defence was part of the trial. Jessel MR who delivered the only judgement said:

> The refusal of leave to amend is simply part of the trial. As you have appealed from the whole judgment the whole case will be open on the appeal, and if the Court of Appeal shall be of the opinion that you ought to have leave to amend it will have power to give you leave then. There is no necessity for a separate appeal.

Counsel for the appellant submitted that the test as to whether the refusal of an application formed part of a judgment was the need to take out a formal order. If it was not needed, it was part of the judgment. He also relied on *Ooi Phee Cheng v. Kok Yoon San* [1951] 1 MLJ 135 where Thomson J struck out a notice of appeal against a decision of a Judge confirming the assessment of damages made by the Registrar which was worded in terms as to appeal against the original order of the Court directing that damages be assessed. No appeal had been filed against that order. In our view, this submission had no merit. *Ooi Phee Cheng's* case did not support the suggested test as it dealt with an entirely different point. In *Laird v. Briggs*, the Court did not apply such test.

In the end, we found it unnecessary to determine whether the application by the appellant to disqualify the Judge was an application in terms of r. 4(1)(b). The Notice of Motion sought to strike out para. 4(1) of the Petition of Appeal on the basis that it was an appeal against the Judge's decision not to disqualify himself from hearing the case. In our view, the Notice of Motion failed on a plain reading of the Notice of Appeal and the Petition of Appeal. The Notice of Appeal was expressly directed at the decision of the Judge given on 3 August 1990 and not his decision not to disqualify himself on 2 July 1990, assuming that that decision amounted to a refusal of the appellant's application in terms of r. 4(1)(b). There was nothing in the said Notice which referred to an appeal against the refusal of his application. The grounds of appeal in the Petition of Appeal were framed in support of the Notice of Appeal. Reading the Petition of Appeal and the Notice of Appeal as one, para. 4(1) of the Petition, which alleged apparent bias on the part of the Judge, was simply one of the grounds on which the appellant sought to reverse or set aside the judgement of the Court. How or with what success the appellant would develop his argument was a matter to be determined at the hearing of the appeal. Para. 4(1) could not be struck out on the grounds given in the Notice of Motion.

The Notice of Motion was accordingly dismissed with costs.

Also found at [1991] 3 CLJ 2693